

The Stamp Duty (Amendment) (No.2) Bill 2010 Bills Committee

**Responses to follow-up actions arising from the discussion
at the meeting on 21 January 2011**

Introduction

At the meeting of the Bills Committee on the Stamp Duty (Amendment) (No.2) Bill 2010 (the Bills Committee) held on 21 January 2011, Members raised a number of questions relating to short-term resale and various aspects of the proposed Special Stamp Duty (SSD). We now provide the Administration's consolidated response to those questions, with input from the Transport and Housing Bureau (THB), the Financial Services and Treasury Bureau, the Inland Revenue Department (IRD) and the Department of Justice (DoJ).

- (a) To provide the actual number of resale within 24 months in the first nine months of 2010 and the same period in 2009. Of these transactions, the number of cases which involve changing flats by existing owners**

2. There were 20 222 resale cases within 24 months in the first nine months of 2010, and 15 357 resale cases within 24 months in the first nine months of 2009, that is, an increase of 32% in the number of resale cases within 24 months in the first nine months of 2010 as compared to the first nine months of 2009. The Administration does not have information on the number of resale cases which involve changing flats by owner-occupiers, because flat purchasers do not have to disclose to the Government the reasons for flat purchase/disposal.

- (b) To advise the application of the terms "acquire" and "dispose of" in some resale cases**

3. As mentioned in our reply of 20 January 2011 to the Bills Committee (CB(1) 1125/10-11(01)), the Administration will submit Committee Stage Amendments (CSAs) to clarify the application of SSD in various situations. The Administration will respond further upon submission of the CSAs.

- (c) To advise other additional legislative/administrative factors which the Administration has considered before reaching the conclusion that holding the seller alone liable for the special stamp duty is not practical**

4. As explained in our reply on 4 January 2011 (CB(1) 984/10-11(01)), stamp duty is a levy on instrument. Under the present Stamp Duty Ordinance (SDO), all the parties executing a chargeable instrument are jointly and severally liable to pay the stamp duty. This applies to the purchase and sale of properties and the leasing of properties. It is one of the fundamentals of the Hong Kong stamp duty regime and we consider that it should be upheld. The market is also familiar with such practice.

5. In the case of SSD, there are many choices in the residential property market, and buyers will make comparison before taking decision. We consider that for transactions on properties which have been held for shorter than 24 months, buyers and sellers will negotiate on which side should pay the stamp duty. While it has been the market practice for buyers to pay the current ad valorem stamp duty, this may not necessarily be the case upon the implementation of the SSD given that buyers can choose to buy properties which have been held for more than 24 months instead.

6. There was a suggestion that a default position be set out in the Bill that sellers would be responsible for paying the SSD to cater for the situation where no agreement could be reached on the party to be held liable for payment of SSD. Under SDO, an instrument has to be duly stamped in order to be registered with the Land Registry. Even if we specify that the SSD is to be borne by the sellers under the default position, if the sellers do not pay the SSD, the buyers will have to pay the SSD in order to have the instrument registered with the Land Registry for protection of title. Therefore, specifying that the SSD should be borne by the sellers where no agreement could be reached on the party to be held liable for payment of SSD will not have much practical effect from the point of view of protecting the buyers.

- (d) To advise the factors which the Administration will take into account to determine when SSD is no longer necessary and to consider the feasibility of including an extension mechanism for the proposed sunset clause for SSD subject to the approval of the Legislative Council**

7. We will continue to closely monitor the development of the property market, and will take timely and appropriate measures as and when necessary to ensure the stable and healthy development of the market. In this regard, the Government will take into account all relevant factors, both internal and external, including the risk of a property bubble, the exuberant state of the property market in particular the mass market, the severity of short-term speculation activities, global liquidity, interest rates, and policies adopted and measures taken by other economies which may have an adverse impact on the healthy and stable development of the local property market. It is not possible for the Government to state in precise terms or set specific targets as to the circumstances under which the Government will do away with SSD. Given the volatility of the property market, the Administration will respond to the changing market flexibly and swiftly, and will seek LegCo's endorsement through the legislative process to do away with SSD as and when we see the need to do so.

8. The proposal to include an extension mechanism in the Bill would undermine the effectiveness of SSD, as speculators may try to predict the time frame when SSD may lapse, which would add volatility to the market.

Transport and Housing Bureau
Financial Services and Treasury Bureau
Inland Revenue Department
Department of Justice
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